

TOOLS TO FIGHT TERRORISM ACT OF 2004

Section by Section Analysis

Title I: Anti-Terrorism Investigative Tools Improvement Act of 2004

Section 102: FISA Warrants for Lone-Wolf Terrorists

This section amends FISA to allow orders for surveillance of foreign visitors to the U.S. who appear to be involved in international terrorism but are not affiliated with a known terror group. When FISA was enacted in the 1970s, terrorists generally were members of distinct, hierarchical terror groups. Today's Islamist extremists often are not formal members of any group, but rather are part of a movement – and occasionally act alone. FISA authority should be updated to reflect this new threat. This section still requires a judicial finding of probable cause that the target is preparing to engage in international terrorism

Section 103: Adding Terrorist Offenses to the Statutory Presumption of No Bail

Under current law, a criminal suspect will be denied bail in federal court if the government shows that there is a serious risk that the suspect will flee, obstruct justice, or injure or threaten a witness or juror. The judge must *presume* this showing is present if the suspect is charged with a crime of violence, a drug crime carrying a potential sentence of ten years or more, any crime that carries a potential sentence of life or the death penalty, or the suspect previously has been convicted of two or more such offenses. This section would add terrorist offenses to this list – judges would be required to presume that facts requiring a denial of bail are present. This is only a presumption – the terror suspect still could attempt to show that he is not a flight risk or potential threat to jurors or witnesses

Section 104: Making Terrorists Eligible for Lifetime Post-Release Supervision

Under current law, a convicted terrorist is eligible for lifetime post-release supervision only if his offense created a foreseeable risk of death or serious injury. This would not include a terrorist who mounted a massive computer attack, or who provided key financial support for terrorist acts. Yet such individuals may have a commitment to terrorist goals that is unlikely to dissipate in prison – they should at least be *eligible* for a sentence of lifetime post-release supervision. This section would make all terrorists eligible for lifetime post-release supervision.

Section 105: Judicially Enforceable Terrorism Subpoenas

This section would allow the FBI to subpoena documents and records “in any investigation of a Federal crime of terrorism.” It would require the FBI to go to federal court to enforce the subpoena in the event that the recipient declines to comply with it. It would also allow the recipient to make the first move and go to court to challenge the subpoena. This section also would allow the Justice Department to temporarily bar the recipient of a JET subpoena from disclosing to anyone other than his lawyer that he has received it. The FBI could bar such disclosure, however, only if the Attorney General certifies that “otherwise there may result a danger to the national security of the United States.” Also, the recipient of the subpoena would have the right to go to court to challenge the nondisclosure order. And finally, this section would protect the recipient from any civil liability that might otherwise result from his good-faith compliance with a JET subpoena. FBI Director Mueller has indicated to Senators that having this subpoena authority would be “tremendously helpful” to terrorism investigations.

Section 106: Punishment of Hoaxes Relating to Terrorist Offenses

This section imposes criminal penalties for knowingly conveying false or misleading information about terrorist crimes or death or injury to a U.S. soldier during war under circumstances where such information may reasonably be believed. The section proscribes hoaxes relating to all terrorist offenses listed in 18 U.S.C. 2332b(g)(5)(B), and allows the death penalty for hoaxes that resulted in death.

Section 107: Increased Penalties for Obstruction of Justice in Terrorism Cases

This section increases from 5 years to 10 years the penalty for obstruction of justice in terror investigations. It also instructs the Sentencing Commission to increase the guidelines range for making false statements in relation to a terrorism

investigation.

Section 108: Automatic Permission for Confidential Requests for CIPA Protection

The Classified Information Procedures Act authorizes the government to seek protection for classified information used in a criminal proceeding. The court may order that the defendant not disclose the information, it may allow the information to be redacted or summarized, or it may allow the government to simply admit to those facts which the classified information would tend to prove (without disclosing the information itself to the defendant). Under current law, a court has discretion whether to allow a *request* for CIPA protection to be made ex parte and in camera. This section would *require* courts to allow CIPA requests to be made ex parte and in camera. Such protection for CIPA requests is necessary because the government risks disclosing sensitive national-security information simply by explaining in open court why CIPA protection is necessary. This bill does not affect the showing that the government must make in order to obtain CIPA protection.

Section 109: Use of FISA Information in Immigration Proceedings

FISA requires the government to provide notice when information obtained through FISA is used in any federal proceeding. In 1996, Congress created an exception to this requirement for alien-terrorist removal proceedings. This section would extend this exception to all immigration proceedings – the government would be able to use FISA information to deny an alien a particular immigration benefit, to bar his reentry, or to detain him on immigration charges, all without revealing that the information was obtained through FISA. Such authority is necessary because in many instances, notice that information was obtained through FISA would disclose to the alien that he or his associates have been the target of a FISA investigation – a disclosure that could compromise an ongoing investigation. In a number of recent instances, the government has declined to use particular information in an immigration proceeding because the government would have been required to reveal the fact of an ongoing FISA investigation.

Section 110: Expanded Death Penalty for Terrorist Murders

This section would authorize the imposition of capital punishment for persons who, “in the course of committing a terrorist offense, engage[] in conduct that results in the death of a person.” Current law requires that a terrorist directly participate in murder in order to be eligible for the death penalty. This section would treat terrorism in the same way that federal law treats treason: the crime itself is death eligible if it results in someone’s death, even if the crime itself does not constitute murder. In effect, the section would allow the death penalty for persons who finance or otherwise assist a fatal terrorist attack, even if they do not directly participate in killing.

Section 111: Denial of Federal Benefits to Terrorists

This section allows a court to deny federal benefits for any term of years or for life to a person convicted of a terrorist offense. The scope of the benefits that can be denied is the same as a parallel provision in the Controlled Substances Act.

Section 112: Uniform Standards for Sharing Information Across Federal Agencies

This section and section 113 improve the FBI’s ability to share intelligence information that has been obtained under existing authorities. This section creates a uniform standard under which the FBI would disseminate intelligence information to other federal agencies. Under current law, several different statutes govern the circumstances under which the FBI may disseminate intelligence information to other federal agencies. Some of these statutes anomalously place restrictions on information sharing with other federal agencies that are greater than the restrictions applied to non-federal agencies. This section allows dissemination of intelligence information under uniform guidelines developed by the Attorney General.

Section 113: Authorization to Share National-Security and Grand-Jury Information with State and Local Governments

This section amends current law to make clear that national-security-related information may be shared with relevant federal, state, and local officials regardless of whether the investigation that produced the information is characterized as a “criminal” investigation or a “national security” investigation. This section also would authorize the sharing of grand-jury information with appropriate state and local authorities. This change previously was enacted by the Homeland Security Act, but that change never went into effect because the Federal Rule of Criminal Procedure amended by the HSA was

revised by the Supreme Court shortly after the enactment of the HSA, and the amendment made by HSA presupposed the earlier text of the federal rule.

Section 114: Providing Material Support to Terrorism

This section amends the current material-support statute by making it a crime to provide material support to any crime of international or domestic terrorism. Federal jurisdiction over material-support offenses would exist when (1) the crime occurs in or affects interstate or foreign commerce; (2) is an existing terrorism offense; (3) is a crime of domestic terrorism designed to affect the policy of the U.S. or a foreign government; (4) when a U.S. citizen, alien of the U.S., or a stateless resident whose habitual residence is in the U.S. commits international terrorism designed to influence U.S. policy or that of a foreign government; (5) an alien offender within the U.S. commits international terrorism intended to influence U.S. policy; (6) an alien offender outside of the U.S. commits an act of international terrorism designed to influence U.S. policy; (7) anyone who aids, abets, or conspires with any person over whom jurisdiction exists under this section to commit a crime identified in this section. This section also amends the definition section of the current statute by more clearly specifying what constitutes material support, including the definition of “training” and “expert advice or assistance.” Finally, this section also amends current law by defining the knowledge required to violate the statute, more specifically defining “personnel,” “training,” and “expert advice,” and specifying that nothing contained in this statute shall be construed to abridge free speech rights.

Section 115: Receiving Military-Type Training from a Foreign Terrorist Organization

This section makes it a crime to knowingly receive military-type training from or on behalf of a designated foreign terrorist organization. This provision applies extraterritorially to U.S. nationals, permanent residents, stateless persons whose habitual residence is the United States, or a person who is brought into or found in the United States. This section also makes aliens who have received military-type training from a terrorist group, or who are representatives or members of a terrorist group, inadmissible to the United States. Finally, this section makes deportable aliens in the United States who have received military-type training from a terrorist organization.

Section 116: Expanded Weapons of Mass Destruction Prohibitions

This section would amend the federal weapons-of-mass-destruction statute to cover attacks on property, and would provide for federal jurisdiction in three new circumstances: (1) if the mail or any facility of interstate or foreign commerce is used in furtherance of the offense; (2) if the attacked property is used in interstate or foreign commerce, or in an activity that affects interstate or foreign commerce; or (3) if any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense. This section also would provide for jurisdiction where the property against which the weapon of mass destruction is directed is property within the United States that is owned, leased, or used by a foreign government. It also would amend the WMD statute to prohibit the use of chemical weapons – the current statute does not prohibit the use of such weapons. Finally, this section expands the definition of “restricted persons” who are prohibited from possessing biological agents and toxins that are select agents, such as ebola viruses and ricin, to include an agent of a terrorist country or a member or agent of a terrorist organization.

Section 117: Participation in Nuclear and Weapons of Mass Destruction Threats to the United States

This section amends the Atomic Energy Act to more broadly prohibit directly and willfully participating in the development or production of any special nuclear material or atomic weapon outside of the United States. This section also makes it a crime to participate in or provide material support to a nuclear weapons program, or other weapons of mass destruction program, of a designated terrorist organization or state sponsor of terrorism. There would be extraterritorial jurisdiction for an offense under this provision.

Title II: PREVENTION OF TERRORIST ACCESS TO SPECIAL WEAPONS ACT

This title is designed to deter the unlawful possession and use of certain weapons – Man-Portable Air Defense Systems (“MANPADS”), atomic weapons, radiological dispersal devices, and the variola virus (smallpox) – whose potential misuse are among the most serious threats to homeland security. MANPADS are portable, lightweight, surface-to-air missile systems designed to take down aircraft. Typically they are able to be carried and fired by a single individual. They are small and thus relatively easy to conceal and smuggle. A single attack could kill hundreds of persons in the air and many more on the ground. Atomic weapons or weapons designed to release radiation (“dirty bombs”) could be used by terrorists

to inflict enormous loss of life and damage to property and the environment. Variola virus is the causative agent of smallpox, an extremely serious, contagious, and often fatal disease. Variola virus is classified by the CDC as one of the biological agents that poses the greatest potential threat for public health impact and has a moderate to high potential for large-scale dissemination. There are no legitimate private uses for these weapons.

Current law allows a maximum penalty of only 10 years in prison for the unlawful possession of MANPADS or an atomic weapon. No statute criminalizes mere possession of dirty bombs. Knowing, unregistered possession of the variola virus is subject only to a maximum penalty of 5 years.

Sections 202-205 of this title make unlawful possession of MANPADS, atomic weapons, radiological devices, or variola virus a crime with a mandatory minimum sentence of 30 years to life. Use, attempts to use, or possession and threats to use these weapons are a crime with a mandatory minimum sentence of life in prison. Use of these weapons resulting in death is subject to the death penalty. These penalties should especially deter middlemen and facilitators who are essential to the transfer of these weapons.

Section 206 amends current law to add the criminal offenses created by this bill as federal wiretap predicates. *Section 207* amends current law to include these new offenses in the definition of “Federal crime of terrorism.” *Section 208* amends current law to include these new offenses in the definition of “specified unlawful activity” for purposes of the money laundering statute. *Section 209* amends the Arms Export Control Act by adding the offenses created by this bill to the provision specifying crimes for which a conviction or indictment is a ground for denying an arms export application.

Title III: RAILROAD CARRIERS AND MASS TRANSPORTATION PROTECTION ACT

Section 302: Attacks Against Railroad Carriers and Mass Transportation Systems

This section would expand and increase criminal penalties for terrorist attacks on railroads and mass transportation systems. Specifically, the section would: extend to railroads all of the protections that currently apply to mass-transportation systems, including making it a crime to aid an offense or to willfully commit an attack on a train (current law requires intent to derail or wreck a train); update current proscriptions on attacks on railroads by borrowing more specific definitions from other statutes (thus also proscribing, for example, attacks with a biological agent or toxins or destructive substances, and expanding the types of railroad equipment that are protected); extend to mass-transportation systems a proscription on undermining railroad infrastructure (this currently only applies to railroads); make it a crime to release biological agent or other hazardous materials on the property of mass transportation providers or railroads; and create an aggravated offense for terrorist attacks against vehicles carrying persons, high-level radioactive waste, spent nuclear fuel, or designated hazardous materials.

Title IV: REDUCING CRIME AND TERRORISM AT AMERICA’S SEAPORTS ACT

This title would create new offenses and broaden and increase penalties for existing offenses for terrorist and other crimes affecting the security of U.S. seaports

Section 402: Entry by False Pretenses to Any Seaport

This section increases penalties for fraudulent access to transport facilities and makes clear that such facilities include seaports and waterfronts.

Section 403: Criminal Sanctions for Failure to Heave to, Obstruction of Boarding, or Providing False Information

This section would make it a crime for a vessel operator to fail to stop or slow a ship when ordered to do so by federal law enforcement, or for any person on board a ship to impede boarding by or provide false information to federal law enforcement.

Section 404: Use of a Dangerous Weapon or Explosive on a Passenger Vessel

This section would make it a crime to willfully use a dangerous weapon or explosive with the intent to seriously injure to any person on board a passenger vessel.

Section 405: Criminal Sanctions for Violence Against Maritime Navigation, Placement of Destructive Devices, and

Malicious Dumping

This section would make it a crime to intentionally damage or tamper with a maritime navigational aid if such act endangers a ship, or to knowingly place any device or substance in the water that is likely to damage a ship, or to intentionally discharge a hazardous substance into U.S. waters with the intent to cause injury.

Section 406: Transportation of Dangerous Materials and Terrorists

This section would make it a crime to knowingly transport bombs or WMD aboard a ship while knowing that the item is intended to be used to commit a terrorist act, or to knowingly transport a person a person who intends to commit or is avoiding apprehension after committing a terrorist act.

Section 407: Destruction or Interference with Vessels or Maritime Facilities

This section would make it a crime to damage or destroy a vessel or its parts, a maritime facility, or any apparatus used to store or load cargo or passengers, commit violence against a person on a vessel if such violence is likely to endanger the vessel or its passenger, commit violence that is likely to cause serious injury to a person at or near a maritime facility, or knowingly communicate false information that endangers the safety of a vessel.

Section 408: Theft of Interstate or Foreign Shipments or Vessels

This section expands the scope of proscriptions on theft of interstate or foreign shipments to include theft of goods from additional transport facilities such as trailers, cargo containers, and warehouses.

Section 409: Increased Penalties for Noncompliance with Manifest Requirements

This section increases penalties for noncompliance with manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country of origin of shipments.

Section 410: Stowaways on Vessels or Aircraft

This section increases penalties for violations of proscriptions regarding stowaways.

Section 411: Bribery Affecting Port Security

This section makes it a crime to bribe a public official with the intent to either commit terrorism or facilitate a fraud affecting a secure area or seaport, or to receive a bribe in exchange for being influenced in the performance of public duties affecting secure areas or seaports while knowing that such influence will be used to commit or plan terrorism.

Title V: COMBATING MONEY LAUNDERING AND TERRORIST FINANCING ACT

This title expands the list of predicate offenses for money laundering to include burglary and embezzlement, operation of an illegal money transmitting business, and offenses related to alien smuggling, child exploitation, and obscenity that were enacted or amended by the Protect Act. It also amends current law to prohibit concealing having provided financing while knowing that it has been or will be provided to terrorists.

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